

(1993) 03 MP CK 0017

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 1511 of 1988 and Miscellaneous Cri. Case No. 350 of 1989

Sugreev Singh and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 02-03-1993

Acts Referred:

Constitution of India, 1950 — Article 20(2), 20(3), 21, 22, 22(1)
Criminal Procedure Code, 1973 (CrPC) — Section 11(1), 251, 254(1), 254(2), 262(1)
Madhya Pradesh Rajya Sadak Parivahan Seva (Bina Ticket Yatra Ki Rok) Adhiniyam, 1974 — Section 10, 11, 13, 141, 143
Penal Code, 1860 (IPC) — Section 34, 506
Road Transport Corporations Act, 1950 — Section 10, 11, 11(2), 3, 6

Citation : (1993) CriLJ 2399 : (1994) JLJ 86

Hon'ble Judges : T.N. Singh, J; S.K. Dubey, J

Bench : Division Bench

Advocate : Rakash Saxena and M.M. Kaushik, for the Appellant; R.D. Jain, for the Respondent

Judgement

T.N. Singh, J.—Both petitioners are convicted u/s 7, the Madhya Pradesh Rajya Sadak Parivahan Seva (Bina Tikat Yatra Ki Rok) Adhiniyam, 1974, for short, the "Act" by Special Motor Vehicles Magistrate, Gwalior. The sentence imposed in one case is fine of Rs. 50/-, in default simple imprisonment for five days; and in the other case, the fine is Rs. 100/-, in default, simple imprisonment for seven days. Having preferred revisions unsuccessfully, they are now assailing their convictions and sentences in this Court, separately, u/s 482 of the Criminal P.C. for short, the "Cr. P.C." or the "Code".

2. During the course of analogous hearing of the two petitions it was found necessary by one of us (S. K. Dubey, J.) to refer to larger bench the question agitated before him on the basis of a decision of a learned single Judge of this Court in Hiralal Gopilal Rathore Vs. M.P. State and Another, In his view, the decision required reconsideration because a Division Bench of this Court in the

case of Avadh Bihari Diwan v. MPSRTC, M.P. No. 88/87, decided on 20-1-1987, had dealt with the same controversy in a different manner and that decision was not cited before learned single Judge, deciding Hiralal's case (supra).

3. Acting as a Mobile Court, the Special Motor Vehicle Magistrate, had tried both petitioners who, at the relevant time, were employed as conductors in the buses operated by the Madhya Pradesh State Road Transport Corporation, for short, the "Corporation", established u/s 3 of the Road Transport Corporation Act, 1950. Petitioner, Sugreev Singh was on duty on 3-7-1986 in the bus operating on the route Mahua to Morena when it was checked by the Flying Squad of the Corporation. The other petitioner Mohd. Saleem was Conductor in a different bus on 2-7-1986, operating on the route Dholpur to Bhind when the Traffic Supervisor of the Corporation detected the offence. On the complaint filed before the learned Magistrate, holding Mobile Court, petitioner Sugreev Singh admitted his guilt, but the other petitioner Mohammad Saleem did not, necessitating prosecution witnesses being examined in his case and they were cross-examined by him. In both cases, the offence alleged was that the two petitioners, as Conductors, had realised fares from passengers, but had not issued them tickets. For decision in one case, conviction is recorded on plea of guilty and in the other case, on the basis of the evidence adduced, on which the offence was found proved. The common plea of both petitioners that the convictions and sentences passed against them are illegal and unconstitutional due to their being denied reasonable opportunity to defend themselves with the aid of a lawyer is indeed the kernel of the controversy leading to the Reference.

4. Before the provisions of the Act or of the Code are examined, with respect to which contentions are raised before us in this Reference, we may usefully point out that in Hiralal Gopilal (supra), on similar facts, the conviction was quashed and a retrial was ordered relying implicitly on Apex Court's decision in the Suk Das Vs. Union Territory of Arunachal Pradesh, taking the view that Magistrate was under an obligation to inform the accused that he was entitled to free legal services at the cost of the State if he was unable to engage a lawyer. It may be useful also to note in this context that on similar facts, relying also on the same decision, another single Judge of this Court, in MPSRTC v. Jaiprakash 1991 MPLJ 439 has upheld the verdict of acquittal rendered in appeal holding that in Khatri and Others Vs. State of Bihar and Others, it was so mandated. In both the cases, the trial Court had rendered the verdict holding the accused guilty u/s 7 of the Act. In Avadh Bihari's case (supra), Khatri's decision was relied on, but the plea was negatived on the footing that there was nothing before the Magistrate to show or suggest that the accused was poverty-stricken or indigent person. It may be also mentioned here that in Hiralal Gopilal, the learned Judge rejected the contention based on the exception contemplated in Sukhdas' case itself that the accused facing trial for an economic offence is not entitled to legal aid taking the view that the Act was not concerned with any "economic offence" because that category of offences were specified in the Economic Offences (Inapplicability of Limitation Act) 1974.

5. In order to gain an insight into the legislative venture which saw the Act brought to the Statute Book on 11-7-1974 after obtaining President's assent, a reference to the relevant Bill (published in M.P. Rajpatra dated 20-3-1974) will be appropriate and also legitimate. Among other objects and reasons for the proposed measure, the fact highlighted in the Bill was that the Corporation was incurring an annual loss of Rs. 80 lakhs on account of ticketless travel on its buses resulting in the State coffers being depleted and it was necessary to take effective measures to check the growing menace. In the long title of the Act is reproduced that object "...to make provision for prevention of ticketless travel in Road Transport Service carried on by the State Transport Undertaking in the State...". It may be mentioned in this connection that although under the Road Transport Corporation Act, 1960, a State Transport Undertaking in each State is constituted as a body corporate as per Section 4 of the said Act and the undertaking is vested with borrowing powers u/s 36, State Government's financial stake in the Corporation's affairs is reflected in Section 25 of the said Act requiring the shares of the Corporation being guaranteed by the State Government. Section 32 of the Act requires the Undertaking to submit for approval of the State Government its annual budget. Provision of "budget grant" by the State Government is contemplated under Sub-section (2). Although the 1950 Act had a pre-Republican lineage traceable to Road Transport Corporation Act, 1948, it unquestionably exudes ethos of post-Republican era embraced by Part IV of the Constitution providing base for State enterprise. Indeed, to pave way for a strong edifice for such ventures, the Constitution (First Amendment) Act, 1951 had to be enacted and the rest is history.

6. Section 3 of the Act provides that a servant of the State Transport Undertaking authorised in this behalf shall supply to a person desirous of travelling on a road transport Service provided by the undertaking a ticket on his making payment of the fare. Section 6 punishes a person travelling without ticket and u/s 7, a servant of the undertaking for breach of his duty to supply the ticket is also punished. The sentence in both cases is of imprisonment up to one month and/or fine up to Rs. 250/-. Section 9 punishes similarly, any person wilfully obstructing or impeding any servant of the undertaking in the discharge of his duty while power to remove a person who travels or attempts to travel without ticket on the undertaking's transport, is contemplated u/s 8. All trials of offences under the Act, as per Section 10, are required to be conducted by the Magistrate specially deputed for the purpose of trying an offence under the Act and he is required to follow, as per Section 11, the procedure contemplated in the Code for trial of summary cases. Section 13 states that the provisions of the Act shall have overriding effect.

7. Conjointly read, Sections 4 and 5 of the Code accord primacy to deviation made in the procedure for trial of an offence under any local or special law while contemplating that generally the procedure provided under the Code is to be followed. Section 11(1) proviso authorises the State Government to establish for any local area one or more Special Courts of Judicial Magistrates to try any

particular case or particular class of cases. Pursuant thereto, the State Government has under law and Legislative Affairs Department Notification No. 33889 to 33907/3(B)/7/73-B-XXI, dated 17-7-1978, constituted a Special Court for the 18 revenue districts of Gwalior, Datia, Bhihd, Morena, Guna, Shivpuri, Tikamgarh, Panna, Chhatarpur, Bhopal, Vidisha, Hoshangabad, Betul, Sagar, Sehore, Shajapur, Raisan and Rajgarh with headquarters at Gwalior to try cases under the Act. The Presiding Officer of the Court is appointed from time to time by High Court as contemplated under Sub-section (2) of Section 11. High Court's latest Notification of appointment in that regard dated 14-9-1991 is placed on record according to which the Magistrate concerned named therein, is authorised to take cognizance of offences under the Act on "challans filed", inter alia by any authorised officer of the Corporation and to try any person "put up" for trial before him by the Corporation. Having been vested with jurisdiction to try offences under the Act in any of the 18 revenue districts, the Magistrate is authorised to try any person accused of an offence under the Act at any place by any of the districts and trial need not take place at his headquarters at Gwalior. His authority, to hold "Mobile Court" (described so at common parlance) for spot trial of any offence committed under the Act is implicit in the terms of his appointment made u/s 11 as he is enabled thereunder to take cognizance of the offence on challan filed before him and on accused being brought before him as contemplated u/s 251 of the Code. Indeed, as per provisions of Sections 10 and 11 of the Act, he is required to try offences under the Act following "summary procedure" contemplated under the Code and in virtue of Section 262(1), he is to act in accordance with Section 251. The particulars of offence of which the person is accused is stated to him by the Magistrate and he is asked whether he pleads guilty or has any defence to make, though it is not necessary to frame a formal charge. If the accused pleads guilty, the Magistrate records the plea as nearly as possible in the words used by the accused; and, in his discretion, he convicts him thereon. When he is not convicted, the Magistrate takes such evidence as may be produced by the prosecution and by the accused in his defence, if any. According to Rule 139 of Rules and Orders of this Court framed for the guidance of subordinate criminal Courts "it is desirable that all witnesses on both sides should be examined on the same day in summons cases tried by Summary procedure".

8. In the course of trial, in virtue of Section 254, the prosecution and the accused are enabled to make application for summoning any witness by depositing in Court the requisite expenses. When, however, witnesses produced by the prosecution are in attendance, the Magistrate is required by Section 309 to examine them and proceedings are to continue from day to day. But, when it is found "necessary or advisable to postpone commencement, or adjourn the trial", the Magistrate is mandated by Sub-section (2) to record reasons and remand the accused if in custody. Section 303 provides that the accused "may as of right be defended by a pleader of his choice". Section 304 contemplates legal aid to accused at State expense in certain cases; in a Sessions trial, Sub-section

(1) provides, "the Court shall assign a pleader for his defence at the expenses of the State" and as per Sub-section (3), by a notification, the State Government may extend generally the same facility "in relation to any class of trials before other Courts in the State".

9. We extract now the relevant provisions of the Constitution:

Article 20:

No person accused of any offence shall be compelled to be a witness against himself.

Article 21 :

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 22(1):

No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

Article 39A.

The State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

10. Shri Kaushik, learned Counsel, appearing for Mohammad Saleem, submitted that the accused having pleaded not guilty, the learned Magistrate was bound to adjourn the trial suo motu as that would have been the reasonable procedure to be followed to comply with the Constitutional mandate of Article 21. That contention has not appealed to us. It is now well-settled that "procedure" contemplated under Article 21 is referable to ? statutory provisions made for trial. Although counsel relied also on Section 309(2), Cr. P.C., that does not carry his argument any further because of what is contemplated in Sub-section (1) thereof and in Section 254(1). Indeed, what reason the Magistrate would record to "post- ! pone commencement of trial" if he found it "necessary or advisable" to do so. He was bound to follow the statutory mandate so as not to act arbitrarily. There could be ground for postponement only if he was able to record any statutorily contemplated reason. Such as, when prayer was made in terms of Section 303(1) by the accused that he be allowed to |. be "defended by a pleader of his choice", or ! there was an application before him u/s 254(2) for witnesses to be examined either by the prosecution or by the accused. In the instant case, when the accused volunteered to cross-examine witnesses produced by the prosecution, there could be hardly any scope for the Magistrate to record any reason for postponing commencement of trial. He would have

acted without jurisdiction if he had suo motu postponed the commencement of trial ignoring the fetters on his jurisdiction imposed by Sections. 10 and 11 of the Act and Sections 254(1) and 309(1), Cr. P.C. and above- referred Rule 139.

11. We are indeed aware of new bearing of Article 21 injected into it by Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another, and the necessity of testing reasonableness of statutory procedure, but we do not think if the provisions aforesaid give the accused a raw deal and invest in the Magistrate any power to act arbitrarily. On the other hand, as held by the Apex Court in *Nirnena Sangma v. Government of Meghalaya* AIR 1979 SC 1813 : (1979 Cri L.I 943), speedy trial of summons cases is to be promoted to fulfil rather the mandate of Article 21 because petty cases are tried by following summons procedure in order that the accused does not suffer undue harassment by protraction of the trial.

12. Shri Saxena, learned Counsel appearing for Sugreev Singh, submitted that though the accused was convicted on his plea of guilty, his plea could not be recorded without allowing him to consult a lawyer beforehand. That contention is also meritless. Section 251 authorises the Magistrate to record accused's plea when he is brought before him and the particulars of the offence are explained to him by the Magistrate. Article 20 of the Constitution does to interdict the Magistrate's action contemplated u/s 251 requiring him to the accused "whether he pleads guilty or has any defence". The accused is not complied, when he is brought before the Magistrate or is asked by the Magistrate, to make any self-incriminatory statement. On the other hand, he is allowed by the Magistrate to exercise his option and not to plead guilty and inform the

Magistrate that he has a "defence to make". True, in *Nandini Satpathy Vs. P.L. Dani and Another*, it was held, "the prohibitive sweep of Article 20 of the Constitution goes back to the stage of police interrogation -- not, as contended, commenting in Court only", but it was also held that the accused must ask for lawyer's assistance in that regard. The content of Constitutional right was expounded recently in *Poolpandi Vs. Superintendent, Central Excise and others* etc. etc., wherein not only *Nandini Satpathy*, but other decisions rendered on Article 22(3) are revisited. That lawyer's assistance in terms of Article 22(3) is not to be provided without asking remains the settled law and indeed, in their latest decision aforesaid, their Lordships underlined the necessity to ensure that the Constitutional right is not "expanded" to favour exploiters engaged in tax evasion at the cost of public exchequer.

13. What is manifestly transparent in our view is that the Constitutional right embraced by Article 22(1) is the pre-Constitution statutory right re-enacted in Section 303, Cr.P.C. corresponding to old Section 340. This position is reflected in *State of Madhya Pradesh Vs. Shobharam and Others*, and *Ram Sarup Vs. The Union of India (UOI)* and Another, The Constitution Bench held, while interpreting Article 22(1), that the accused is to make a request to the Court to allow him an opportunity to engage a lawyer to defend him. In the dawn of Republican era,

the position made clear by the Apex Court in *Tara Singh Vs. The State*, is that the police or the Magistrate is under no obligation to provide an accused a lawyer and it is accused's duty to ask for one; when he does so, opportunity is to be afforded to him in that regard.

14. What indeed is the context of the Constitutional right contemplated under Article 39A is the surviving question and that we examine now. In *Madhav Hayawadanrao Hoskot Vs. State of Maharashtra*, the Court observed that Article 39A was an interpretative tool for Article 21 and that partial statutory implementation of the mandate is found in Section 304, Cr.P.C. It was held (at page 1687 : (of Cri LJ):

Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the Court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign competent counsel for the prisoner's defence, provided the party does not object to that lawyer.

In *Khatrri's case (supra)*, their Lordships, similarly, observed, "There may be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the State and than in such cases the beneficent Constitutional facility of free legal aid may not be available as that is meant to do social justice to "70 per cent of the people in the rural areas who are illiterate and even more than that percentage of people are not aware of the rights conferred upon them by law". *Ranjan Dwivedi Vs. Union of India (UOI)*, highlighted enactment of Section 304, Cr.P.C. and of the fact that in the field occupied thereby Article 39A had no scope to operate and the prayer of the petitioner for mandamus to the Union of India to give him financial assistance to engage a counsel of his choice was rejected.

15. It is true, in *Sukhdas (supra)* is to be read of the first flush expanded version of the right contemplated under Article 39A, but a careful reading will show that it was Article 21 which really tilted the scale in appellant's favour. Accused appellants were convicted u/s 506/34, IPC and were sentenced each to simple imprisonment for a period of two years. Their trial was held vitiated on account of infringement of their fundamental right contemplated under Article 21 inasmuch as they remained unrepresented by a lawyer and the trial Court was found wanting in discharge of its constitutional duty to inform the accused persons that if they were unable to engage the services of a lawyer on account of poverty or indigence, they were entitled to free legal services at the cost of the State. For the view taken, reliance was placed by their Lordships on *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*, and *Hoskot's case (supra)*. On facts, it was found that the case was tried as a warrant case and witnesses examined by the prosecution could not be cross-examined by the appellants; the Court had further turned down their request to examine witnesses in their defence. For reaching the conclusion, it was held that the

requirement of reasonable, fair and just procedure prescribed by Article 21 was violated, vitiating the trial. It was still, however, observed, "it must be recognised that there may be cases involving offences, such as, economic offences or offences against law prohibiting prostitution or child abuse and the like where social justice may require that free legal service may not be provided by the State".

16. To us, it appears manifestly clear that in Sukhdas (supra), in absolute terms, no right was carved out from Article 39A as two learned single Judges of this Court have held in Hiralal and Jaiprakash's case (both supra). The trial Court's duty arises only when the accused's entitlement is contemplated in law, such as u/s 304(3), Cr. P. C, to free legal aid, to inform him of his right in that regard. Sukhdas is no authority for the proposition that each and every trial would be invalid if an unrepresented accused is not informed that if he has no means to engage a counsel, that shall be provided at State's cost. Indeed, Sukhdas rather rules out the presumption of indigence and ignorance of the accused, casting thereby no duty on the trial Court to inform in all cases an unrepresented accused "that at State's cost, legal counsel may be available. Because, in clear terms of the Court categorically held that in certain cases, there would be no entitlement to claim legal aid and, therefore, no duty on that basis is created to inform the accused of his right in that regard. Not Article 39A, but Article 21 was invoked in Sukhdas to quash the trial because the accused persons were deprived of their liberty as a result of substantive sentence of imprisonment being imposed on them in the trial. In both decisions of this Court in Hiralal and Jaiprakash, it was unfortunately overlooked that the conviction of the Conductors u/s 10, saddled them with the liability of fines only.

17. We do not think if legitimately the duty of the Magistrate or the right of the accused can be "expanded" beyond what is contemplated in Khatri and Sukhdas by their Lordships of the Apex Court because only, the law which their Lordships have laid down, we are bound to enforce in terms of Sections 141 and 143 of the Constitution and in line with the mandate of Poolpandi (supra) of their Lordships, we are also required to enforce. The Act, in our view, contains provisions for promoting social justice by fighting the menace of ticketless travelling in so far as it concerns the offence u/s 7 which is committed by an employee of the Corporation. He cannot complain of social injustice if he is put up for trial for dereliction of his duty contemplated u/s 3 and misappropriating the fare realised by either negligently or wilfully omitting to supply a ticket to the passenger who had paid the fare. In such a case, it cannot be said that he is either poverty stricken or ignorant of his duty or of the law. Although reference is made in Sukhdas and Khatri to offences, in particular, against law prohibiting prostitution or child abuse, the description is not exhaustive, but illustrative. Indeed, in our view, the offence contemplated u/s 7 of the Act is easily embraced by the rubric of "Economic Offence" which term is not defined and has no technical meaning. We are unable to persuade ourselves to accept the view that only those offences as come within the purview of the Economic Offences, (Inapplicability of

Limitation Act), 1974, are such offences to which the exception contemplated in Sukhdas and Khatri is to be applied. Indeed, the gist of an "economic offence" is unjust enrichment by a person by illegal means, by indulging in such activities as are prohibited by law. We propose to define the term "economic offence" in these terms having regard to the object of different enactments included in the Schedule of the aforesaid 1974 Act. Such illegal activity as results in the national economy being adversely affected in any manner, more so when it creates a drain on the State coffer cannot but constitute an economic offence. We have already adverted to the object of the Act that to safeguard public revenue and plug the drain of the State exchequer, the Act was enacted. Therefore, any activity of any person prohibited by the Act frustrating the object of the Act cannot, but be an economic offence.

18. Shri Jain, learned Counsel appearing for Corporation, cited a decision of Gauhati High Court in Pratap Chandra Kakati and Another Vs. State of Assam, wherein it was held that every case which ends with imposition of a small fine cannot be held hit by Article 21 of the Constitution and free legal service is not to be made available in all cases. To another judgment of the same Court in Phusu Koiri Vs. State of Assam, reference was made by the learned Counsel which is on identical lines in that a prisoner's right to appeal being impaired by State action, it was observed that Article 39A is meant to take care of persons of poverty and ignorance of the incarcerated appellants who can seek protection in terms of Arts. 14, 19 and 21 when the State is found wanting in promoting justice on the basis of equal opportunity. A learned single Judge of Orissa High Court in K.N. Sarkar Vs. The State, which also Shri Jain cited, has held that conviction cannot be challenged as vitiated on account of infringement of Article 22 if request for legal assistance is not made and there is no material in that regard on the record. In Shirichand Dhannalal 1992 MPLJ 383, a learned single Judge of this Court has held that right to seek legal assistance is not limitless and such a right does not extend to offences punishable with fine and tried summarily.

19. We also refer to two other decisions of this Court cited by counsel in support of their argument. In Raideo 1979 MPLJ 506 : 1979 MPLC 105 (MP), a Division Bench of this Court has held that simply because an employee of the Corporation is convicted u/s 7 of the Act, he cannot be held guilty of major misconduct under Standing Order 12(1)(a) because it is to be established that the offence for which he was convicted involved moral turpitude, such as, when the allegation against him was that he was negligent merely in not supplying tickets and was informed accordingly. Moral turpitude was not proved thereby and was not even proved in the domestic enquiry, lacking valid basis for the finding. The other decision, MPSRTC v. Hukumchand, short noted in 1979 MPLJ 20, is also by a Division Bench of this Court wherein it was held that on the ground merely that conviction u/s 7 of the Act may lead to serious consequences such as dismissal of accused from service, the Magistrate could not try the offence in regular way because Section 11 of the Act required him to try it summarily. It was held that when the accused merely admits that certain passengers were travelling without ticket, his

conviction on plea of guilty cannot be sustained if the particulars of offence recorded by the Magistrate did not contain the ingredient of "negligently or wilfully" omitting to supply ticket and the accused also did not so admit.

20. The up shot of the above discussion is that both accused Sugreev Singh and Mohammad Saleem, convicted u/s 7 of the Act, cannot assail their conviction on the ground that their trials are vitiated as a result of infringement of their fundamental right Contemplated under Article 21 because the Magistrate failed to inform them that they were entitled to free legal services at the cost of the State if they were unable to engage a lawyer. We have found ourselves unable to subscribe to the view expressed in that regard by two learned single Judges of this Court in Hiralal and Jaiprakash (both supra) because for that view, we have failed to find any foundation in the decisions of their Lordships in Sukhdas and Khatri (supra). Indeed, on the other hand, we hold that the view which they have expressed is rather impaired by the exception stated by their Lordships in those two cases and, therefore, both decisions of this Court in Hiralal and Jaiprakash are liable to be overruled. We accordingly hold that law was not correctly stated in the cases of Hiralal and Jaiprakash.

21. Let the records now be placed before the Referring Judge for rendering decision on merits in the two cases. We have dealt with in this Reference with the single contention pressed only on the constitutional infirmity of the two convictions.